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Attorneys for Third-Party Defendant,  
**CONCEPT CONSTRUCTION &  
DEVELOPMENT, INC.**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FRANK J. SWEETZ, a single man,

Plaintiff,

vs.

MOTEL 6 OPERATING L.P., a foreign  
Limited Partnership, ACCOR NORTH  
AMERICA, INC., GENERAL  
PARTNERSHIP d/b/a "MOTEL 6";  
LIBERTY MUTUAL INSURANCE GROUP  
a/k/a LIBERTY MUTUAL INSURANCE  
COMPANY; DOES I through X, inclusive,

Defendants.

MOTEL 6 OPERATING L.P., and ACCOR  
NORTH AMERICA, INC.,

Third-Party Plaintiffs,

vs.

CONCEPT CONSTRUCTION &  
DEVELOPMENT, INC.,

Third-Party -Defendant.

CASE NO. 2:08-cv-01604-JCM-RJJ

**ORDER ON CONCEPT CONSTRUCTION  
& DEVELOPMENT, INC.'S MOTION  
FOR SUMMARY JUDGMENT OR, IN  
THE ALTERNATIVE, FOR AN  
ADVERSE INFERENCE AGAINST  
THIRD-PARTY PLAINTIFFS MOTEL 6  
OPERATING, L.P. AND ACCOR NORTH  
AMERICA, INC.**

**ORDER ON CONCEPT CONSTRUCTION & DEVELOPMENT, INC.'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR AN ADVERSE INFERENCE AGAINST THIRD-PARTY PLAINTIFFS MOTEL 6 OPERATING, L.P. AND ACCOR NORTH AMERICA, INC.**

Third-Party Defendant CONCEPT CONSTRUCTION & DEVELOPMENT, INC.'s (hereinafter "Concept Construction") Motion for Summary Judgment or, in the Alternative, for an Adverse Inference having come on regularly for hearing on Monday, June 21, 2010, at 10:00 a.m., the Honorable United States District Court Judge James C. Mahan presiding. Jonathan D. Blum, Esq. of THARPE & HOWELL, LLP appeared on behalf of Third-Party Plaintiffs MOTEL 6 OPERATING, L.P. and ACCOR NORTH AMERICA, INC. (hereinafter collectively referred to as "Motel 6"), and Nathaniel G. Hannaford, Esq. of McKAY LAW FIRM, CHTD. appeared on behalf of Third-Party Defendant Concept Construction.

After reviewing the Memorandum of Points and Authorities and hearing oral arguments of counsel in support of and in Opposition to Concept Construction's Motion for Summary Judgment or, in the Alternative, for an Adverse Inference, and after being fully advised in the premises and good cause appearing therefore, the Court now Orders as follows:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Concept Construction's Motion for Summary Judgment or, in the Alternative, for an Adverse Inference against Third-Party Plaintiffs Motel 6 is **DENIED, IN PART**, as it relates to Concept Construction's request for Summary Judgment and the exclusion of Motel 6's expert, Lane Swainston. Accordingly, Summary Judgment is hereby denied. Likewise, Concept Construction's request that Motel 6's expert witness, Lane Swainston, be precluded from offering testimony is also denied.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Concept Construction's Motion for Summary Judgment or, in the Alternative, for an Adverse Inference against Third-Party Plaintiffs Motel 6 is **GRANTED, IN PART**, in that Concept Construction is entitled to a Permissible Adverse Inference Jury Instruction relating to the spoliation of evidence that is the subject of this Motion.

James C. Mahan  
UNITED STATES DISTRICT JUDGE

Attorneys for Third-Party Plaintiffs,  
**MOTEL 6 OPERATING, L.P. and**  
**ACCOR NORTH AMERICA, INC.**